

PART 809—CONTRACTOR QUALIFICATIONS

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PART 809 - CONTRACTOR QUALIFICATIONS

SUBPART 809.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

809.104-2 Special standards.

Standards applicable to subsistence will be established on preaward surveys prescribed by 809.106-1.

809.106-1 Conditions for preaward surveys.

(a) Preaward on-site evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundry and dry cleaning activities. A committee under the direction of the contracting officer and composed of representatives of the medical service and/or using service chiefs or designees appointed by the facility director will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Department of Veterans Affairs facility or Federal agency.

Approved inspection reports of another Department of Veterans Affairs facility will be accepted by Department of Veterans Affairs facilities and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the proposed contract period.

(b) Preaward on-site evaluation of dairy plants will not be made by the Department of Veterans Affairs when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward on-site evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such as pies, cakes, cookies), the plant where these products are produced or

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prepared will be inspected and evaluated as provided in paragraph (a) of this section. On-site evaluation will be made at least annually and recorded on VA Form 10-2079, Inspection Report of Bakery.

SUBPART 809.2 - QUALIFIED PRODUCTS

809.206 Acquiring qualified products.

(a) Federal Qualified Products Lists are lists of products qualified under the applicable Federal or interim Federal specification. Such lists may be used as authorized by the appropriate administration or staff office. Requests to receive copies of existing Federal Qualified Products Lists will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management for transmittal to General Services Administration. Requests to establish a Federal Quality Products List for a commodity will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management, supported by one or more of the following justifications:

- (1) The time required for testing after award would unduly delay delivery of the supplies being purchased.
- (2) The cost of repetitive testing would be excessive.
- (3) The tests would require expensive or complicated testing apparatus not commonly available.
- (4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.
- (5) The determination of acceptability would require performance data to supplement technical requirements in the specification.

(b) VA Qualified Products Lists are lists of products qualified by VA under VA specifications or purchase descriptions. Such lists may be established as authorized by the appropriate administration or staff office.

- (1) VA Qualified Products Lists will be supported by one or more of the justifications in 809.206(a) or the following:
 - (i) Where tests result in substantial or repetitive rejections,
or

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(ii) Where professional requirements of performance, balance, design, or construction cannot economically be developed into clear specifications, and professional judgment is required in determining the acceptability of items meeting VA requirements.

(2) In the event that the requirement for a VA Qualified Products List is established for any given product, known suppliers of the type of item required will be notified and given an opportunity to submit samples for inspection and test based upon guarantee that they will deliver the item to be inspected, provided the item is acceptable. A Qualified Products List shall not be used as a means of restricting competition to favored suppliers. All suppliers so desiring shall be given an opportunity to have their products tested for acceptability.

(3) Costs involved in the inspection and test will be borne by VA. The supplier will be required to bear the cost of the sample and its transportation to the inspecting point. After inspection, the sample shall be returned to the supplier "as is" unless it is destroyed by inspection or disposed of or retained by VA as authorized by the supplier.

(4) Items which have been accepted for the qualified products list will be subject to constant review for compliance with the applicable specification. Where there is a variance between the specification and item, the supplier shall be requested to furnish an item that conforms to the specification. Failure or inability on the part of the supplier to provide an item that conforms to the specification will be sufficient cause to consider the item unacceptable in response to subsequent invitations.

(5) The acceptance of an item for the qualified products list does not guarantee acceptance in any future purchase, nor does it constitute a waiver of the requirements of the specifications as to acceptance, inspection, testing or other provisions of any future contract involving such item.

(6) Bid invitations covering products which have been included in a qualified products lists will include the clause set forth in FAR 52.209-1 or 52.209-2 as applicable.

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809.270 Qualified products for convenience/labor-saving foods.

(a) Each VA medical district's Dietetic Service representative is delegated authority to establish a common Qualified Products List for convenience/labor-saving foods for the use of medical centers within his/her respective district. The medical district Dietetic Service representative will notify the Director, Dietetic Service, VA Central Office, of the establishment of each Qualified Products List and amendments to each established list.

(b) Each medical center is authorized to use its district Qualified Products List. Each medical center may test food of its own choice, but will submit test results to the district Dietetic Service representative. The Dietetic Service representative will coordinate and consolidate the test results and recommendations of individual medical centers with other medical centers within the district in order to avoid unnecessary duplication.

(c) The approved medical district Qualified Product List will be furnished each Acquisition and Materiel Management Service office within the district. The Acquisition and Materiel Management Services will have access to complete and accurate records of established Qualified Products Lists and all test results. These records will be made available to the Office of Acquisition and Materiel Management, VA Central Office, upon request.

SUBPART 809.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

809.400 Scope of subpart.

This subpart prescribes procedures for debarring or suspending contractors and the inclusion of those contractors on the consolidated list of debarred, suspended or ineligible bidders.

809.403 Definitions.

Fact-finding as used in this subpart shall mean a gathering of facts which is accomplished through informal meetings with the contractor, submissions of information, either verbally or in writing, by the contractor, and any other method deemed appropriate by the debarring official.

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Office of Acquisition and Materiel Management (95) shall be responsible for the action described in FAR 9.404(c)(1),(2),(4) and (6).

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(b) The Office of Acquisition and Materiel Management (91) shall be responsible for the actions described by FAR 9.404(c)(3) and (5).

809.405 Effect of listing.

The Deputy Assistant Secretary for Acquisition and Materiel Management shall make the determinations required by FAR 9.405(a) and 9.405-2 to solicit from, award contracts to, or consent to subcontracts with contractors whose names are included on the consolidated list of debarred, suspended or ineligible contractors.

809.406 Debarment.

809.406-1 General.

(a) The Deputy Assistant Secretary for Acquisition and Materiel Management is the debarring official for the Department of Veterans Affairs.

(b) Any Department of Veterans Affairs employee may submit a recommendation to the Deputy Assistant Secretary for Acquisition and Materiel Management that a firm or individual be debarred by the Department of Veterans Affairs.

(c) Such recommendations must be supported by documentary evidence of a cause listed in FAR 9.406-2.

809.406-3 Procedures.

(a) The Deputy Assistant Secretary for Acquisition and Materiel Management shall, upon receipt of a recommendation for debarment, appoint a designee to conduct an investigation, initiate debarment and present the facts to the debarring official for consideration and action.

(b) The appointed designee shall issue the proposed debarment notice as required by FAR 9.406-3(c).

(1) If no reply is received from the firm or individual to the notice of proposed debarment, the case will be referred to the debarring official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the appointed designee prior to making a

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recommendation to the debarring official. If the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment, the designee appointed by the Deputy Assistant Secretary for Acquisition and Materiel Management will conduct a fact-finding as prescribed by FAR 9.406-3(b)(2).

(3) Upon completion of the fact-finding with respect to disputed facts, a written findings of facts will be provided to the debarring official.

(4) The debarring official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

809.406-4 Period of debarment.

The period of debarment will be based upon the circumstances involved but will not, except in unusual circumstances, exceed a period of 3 years. The Deputy Assistant Secretary for Acquisition and Materiel Management may for those firms or individuals debarred by the Department of Veterans Affairs decide to remove the debarment, reduce the period of debarment, or amend the scope of the debarment, if indicated, after review of documentary evidence submitted by or in behalf of the contractor setting forth the appropriate grounds for granting of such relief. Such grounds may be, but are not limited to, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management or the elimination of the cause of which debarment was imposed.

809.407 Suspension.

809.407-1 General.

The Deputy Assistant Secretary for Acquisition and Materiel Management is the suspending official for the Department of Veterans Affairs.

809.407-3 Procedures.

(a) Suspension may be recommended by any Department of Veterans Affairs employee. These recommendations will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management and must be supported by documentary evidence of a cause listed in FAR 9.407-2.

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(b) The Deputy Assistant Secretary for Acquisition and Materiel Management shall designate an official to initiate suspension, conduct an investigation and present the facts to the suspending official for consideration and appropriate action.

(c) The designee shall issue the proposed suspension notice as required by FAR 9.407-3(c).

(1) If no reply is received from the contractor to the notice of proposed suspension, the case will be referred to the suspending official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the official conducting the suspension proceedings prior to referring the case with recommendations to the suspending official. If the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the proposed suspension, the designee of the Deputy Assistant Secretary for Acquisition and Materiel Management will conduct a fact-finding as prescribed by FAR 9.407-3(b)(2).

(3) Upon completion of the informal hearing with respect to the disputed facts, a written findings of facts will be prepared and presented to the suspending official.

(4) The suspending official shall make a decision on the basis of all information available including findings of facts, and/or agreements submitted by the contractor.

SUBPART 809.5 - ORGANIZATIONAL CONFLICTS OF INTEREST

809.504 Contracting officer's responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

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(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discretion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are, that organizational conflicts of interest may result from:

(a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or

(b) unfair competitive advantage which exceeds a normal flow of benefits from the award of the contract.

809.508-2 Contract clause.

The representation in 852.209-70, Organizational Conflicts of Interest, will be made a part of all solicitations for consulting services.

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**SUBPART 809.7 - DEFENSE PRODUCTION POOLS AND RESEARCH
AND DEVELOPMENT POOLS**

809.702 Contracting with pools.

Department of Veterans Affairs contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Under Secretary for Health, or designee, will notify the appropriate administrations and staff offices when such pools are approved.

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